United States District Court
for the
District of Massachusetts

HECTOR PINEIRO, Plaintiff v. GARY GEMME, WORCESTER CHIEF of POLICE and the CITY OF WORCESTER, Defendants	)	Civil Action No. 4-10-CV-40262-FDS

Defendants' Memorandum of Reasons in Support of Their Motion To Strike

Now come the Defendants Gary Gemme, Worcester Chief of Police, and the City of Worcester, by and through their undersigned counsel, and hereby respectfully submit this Memorandum of Reasons in Support of Their Motion to Strike under Fed. R. Civ. P. 12(f) or, in the alternative, for a more definite statement under Fed. R. Civ. P. 12(e).

Rule 12(f) authorizes the court to strike any redundant, immaterial or impertinent from any pleading. Rule 12(f) is "designed to reinforce the requirement of Fed. R. Civ. P. 8(d)(1) that pleadings be simple, concise and direct." 5C CHARLES A. WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE, §1380, at 394 (2004). The Court has discretion to strike a pleading that violates Rule 8. Newman v. Commonwealth of Massachusetts, 115 F.R.D. 341, 343-4 (D. Mass. 1987); see also Cranney v. Trustees of Boston University, 139 F.Supp. 130 (D. Mass. 1956)(Complaint which covered eight pages of long legal paper with single space typing would violate rule requiring pleading to be simple, direct, and concise).

Recognizing that a motion to strike under Rule 12(f) is an extraordinary act, the Defendants do not propose a return to the days where "pleading is a game of skill in which one misstep by counsel may be decisive to the outcome." Conley v. Gibson, 355 U.S. 41, 49, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). However, Defendants contend that, to paraphrase Conley v. Gibson, pleading should also not be a game of chance where defendant's counsel must guess at the elements of the plaintiff's claim.

The particulars of this Complaint merit the exercise of the Court's discretion. It contains 131 paragraphs and 15 pages containing numerous paragraphs with the character more of a memorandum of law than a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Complaint contains footnotes, which seems on its face to violate the command of Rule 8(d)(1) for a "direct" statement of allegations. One footnote (inserted at Complaint ¶ 57) runs 18 lines of microscopic type containing, not a single allegation of fact, but rather a statement of the law of Massachusetts on the issuance of licenses to carry firearms. The Complaint includes a discourse on the state laws on licensing firearms (¶¶ 50, 53, 57, 58, 59, 60, 70 & 94) and a discourse on the Second Amendment (¶¶ 51, 52, 53, 54 & 55).

The Complaint includes immaterial and impertinent matters concerning discussions the Plaintiff alleges took place with the Defendant City of Worcester's Law Department (¶¶ 89-92) prior to the filing of this Complaint. This irrelevant line of discussion concludes in paragraph 92 with a vague invitation to "See infra discussion". The Defendant City of Worcester's Law Department is not a party to this case – it is the legal representative of the Defendant chief of police and Defendant city of Worcester. Whatever conversations the Plaintiff may have had with the Defendant City's legal department prior to the filing of this case are not germane to his claims and should be stricken from the Complaint.

In addition to those described above, the Complaint includes other purely redundant allegations. It begins, after indentifying the parties, with the unnecessary statement in paragraph 6: "Each of the foregoing paragraphs is incorporated as if fully set forth herein." Paragraph 20 repeats the allegation in paragraph 12 that the Plaintiff maintains a law office at 807 Main Street, Worcester.

The Complaint contains a series of irrelevant references, including website addresses, to documents posted by entities not parties to this action: the Massachusetts Police Chiefs Association (¶ 95); the Medford Police Department.(¶ 96); the Federal Bureau of Investigation (¶

97); and, a website ("www.handgunlaw.us") which is owned by two private individuals, Steve Aikens and Gary Slider, who are not parties and have no relevance to this case (¶ 98). These paragraphs are followed by two more paragraphs (¶¶ 99 & 100) quoting from these sites with each concluding with the legal citation device "Id."

The Defendants are prejudiced by this Complaint in two basic ways: First, the Defendants are a public official and a public entity, each represented by in-house public counsel and all with limited time and resources to respond to an excessively meandering, verbose and impertinent pleading containing limited allegations of relevant facts and numerous assertions of law. Second, the mixture of excessively meandering, verbose and impertinent pleadings leaves the Defendants only to speculate as to the statement of his claim, particularly with respect to the Plaintiff's Equal Protection claim (Complaint ¶¶ 124-131) which starts at paragraph 124 by incorporating all one hundred twenty-three prior paragraphs. It is difficult, if not impossible, to understand the elements of the Plaintiff's Equal Protection claim when the Complaint meanders from the Second Amendment to the city of Medford to the crime rate in Main South (Complaint ¶¶ 15-19, 21, 26-30) to a footnote saying that the Defendants have a policy of waiving fees for law enforcement personnel (Complaint ¶ 67, fn. 2) and so forth. The Complaint uses the phrase "See infra discussion" in paragraphs 76 and 92 and thus puts the Defendants in the position of guessing as to the nature and elements of the Plaintiff's Equal Protection claim.

On the other side of the equation, the Plaintiff will suffer no prejudice by the striking of this Complaint. The Plaintiff has an action in state court appealing the issuance of the same license to carry a firearm. (Complaint ¶ 113)(See also Complaint Exhibit 9, a copy of Plaintiff's state court "Petition for Judicial Review of Refusal to Issue License to Carry a Firearm"). The Defendants have, together with this motion to strike, filed a motion in this Court seeking to dismiss or stay this federal action under the Pullman Abstention Doctrine. See Railroad Commission of Texas v. Pullman Co., 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941). Should the Court grant that motion, the Plaintiff will not be prejudiced by any delay in the commencement of the resolution of his federal claims here. Lastly, the Plaintiff is an attorney representing himself. He pleads that fact twice. (Complaint ¶¶ 12 & 20). Therefore, there should be no concern that the Court, by striking this Complaint, would be unfairly punishing a party because of the conduct of his or her attorney.

The Court should, therefore, strike Plaintiff's Complaint as replete with immaterial, impertinent and redundant matters so as to constitute a violation of the requirements of Fed. R. Civ. P. 8(d)(1) that allegations in a complaint be "simple, concise and direct" and of Fed. R. Civ. P. 8(a)(2) that a claim for relief "must contain … a short and plain statement showing that the pleader is entitled to relief."

In the alternative, Defendants respectfully move this Court pursuant to Fed. R. Civ. P. 12(e) to order the Plaintiff to remove all immaterial, impertinent and redundant matters from his Complaint and provide the Defendants a complaint with allegations which are simple, concise and direct.

GARY GEMME, and
CITY OF WORCESTER,

By their attorney,

/s/ David M. Moore
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CERTIFICATE OF SERVICE

I, David M. Moore, hereby certify that on this 24th day of January, 2011, I served the within Memorandum of Reasons in Support of Defendants' Motion For A More Definite Statement of Plaintiff's Complaint upon Plaintiff by providing a copy of the same to Plaintiff's counsel of record, Hector E. Pineiro, via the United States District Court's electronic notification system.

/s/ David M. Moore
David M. Moore
City Solicitor